

REMARKS

Entry of this amendment is respectfully requested.

It is not believed that the 35 U.S. C. §112, second paragraph, rejections apply to the present claims.

Claims 41-61 were rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Gheimecker. Applicants respectfully traverse.

The Examiner alleges that Gheimecker discloses “partially aluminized” metal surfaces, but Gheimecker does not disclose that a metallic surface comprising at least 5% by weight of at least one of aluminum or an aluminum alloy as claimed, can be processed. Thus, a prima facie case of obviousness has not been established.

Also, the Examiner discloses that by coating with the specific formulations on aluminum on can avoid the formation of Al-F complexes on the aluminum surfaces having the claimed aluminum or aluminum alloy content.

Additionally, Gheimecker does not specifically teach that one can perform the claimed process without a precipitation tank due to the use of a zinc phosphating solution of the particular components as described. Aluminum is mentioned in the cited reference as noted by the Examiner, but nowhere is the presently claimed process disclosed nor the bath used in the process having the presently claimed acidity, sodium and potassium content, and free acid content. The Examiner apparently assumes that the negative limitation is disclosed, but there is nothing in the reference that suggests this because the examples of the reference are performed with steel, and not aluminum or an aluminum alloy, so no Al-F complex would be formed, as aluminum is absent from the disclosed experiments. There is nothing in Gheimecker that suggests can be operated free of a precipitation tank, and, in fact, Gheimecker mentions that

Gheimecker teaches free acid ranges of 0.5 to 2.5 points in claim 1. Therefore, this is a clearly less acidic solution than is presently claimed.

Thus, this rejection must be withdrawn.

Claims 41-61 were rejected under 35 U.S.C. §103(a) over Schubach. Applicants respectfully traverse.

The Examiner fails to allege that Schubach discloses treating a metallic surface comprising at least 5% by weight of at least one of aluminum or an aluminum alloy as claimed, can be processed. Thus, a prima facie case of obviousness has not been established.

Furthermore, Applicants emphasize that Schubach does not disclose the claimed sodium/potassium content nor can one discern the claimed alkali metal contact from Schubach, as the nitrate of Schubach may be provided as an alkali nitrate, but the nitrate is present in amounts from 0.5 to 20 g/L, and, furthermore, layer silicates may be added that contain lithium (see col. 4, lines 1-17). There is no clear indication from the cited references that one should perform the claimed process using a composition with the recited features, certainly not without a precipitation tank.

Since each and every feature is not taught or suggested by the cited references, all rejection should be withdrawn.

Claims 41-61 were provisionally rejected for obviousness-type double patenting over claims of USSN 10/467,850, which is now abandoned, so this rejection should be withdrawn.

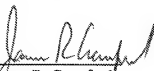
Claims 41-61 were provisionally rejected for obviousness-type double patenting over claims USSN 10/555,929. The '929 application is a later-filed application, and if a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, i.e., the present application, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. Applicants do not concede that the '959 Application should be rejected on other grounds, nonetheless, the Examiner has rejected that application on other grounds which Applicants traverse and will address during the prosecution of the '959 application.

In view of the foregoing, allowance is respectfully requested.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-0624, under Order No. DNAG-297-US.

Respectfully submitted

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